

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION

DEMETRIUS BROWN,  
Plaintiff,

v.

U.S. JUSTICE DEPARTMENT,  
BUREAU OF PRISONS, FCI MCKEAN,  
WARDEN JOHN J. LAMANNA,  
REGIONAL DIRECTOR D. SCOTT  
DODRILL, MEDICAL DIRECTOR  
NEWTON E. KENDIG, DIRECTOR  
HARLEY G. LAPPIN,  
Defendants.

Civil Action No. 04-379 Erie

CLERK  
U.S. DISTRICT COURT

06 APR -3 P1:34

FILED

MOTION FOR SANCTION AGAINST DEFENDANTS  
FOR WHICH WHOSE MANAGING AGENTS FAILED  
TO PERMIT PLAINTIFF FROM PARTICIPATING  
IN CONFERENCE CALL SCHEDULED 3/3/06,  
FRIDAY AT 2:00 p.m.

COMES NOW, DEMETRIUS BROWN, herein as Plaintiff, proceeding Pro-Se, hereby moves this Honorable Court, the United States District Court for the Western District of Pennsylvania, pursuant to Federal Rules of Civil Procedure, Rule 37(b)(2) for an Order sanctioning Defendants for which whose managing agents failed to permit Plaintiff from participating in conference call scheduled 3/3/06, Friday at 2:00 p.m. in regards to his Petition for Preliminary Injunction.

In support, Plaintiff affirms and declares under penalty of perjury, the following:

1. On 3/2/06 Plaintiff, while housed at FCI RayBrook, specifically Unit Ausable, had the opportunity to review the institutional "Call Out" detailing times, for the following day, inmates are to report to a designated location. The Call Out on 3/2/06 stated that Plaintiff was to report to Unit Gen[esse] at 13:30 hrs. (1:30 p.m.) The Call Out did not state for what purpose, but to only report to the designated location. See Exhibit A.

2. On 3/3/06 anticipating whether legal mail was to be received, Plaintiff proceeded, at approximately 11:30 p.m. following lunch, to make an early presence to the Unit Genesse B Team<sup>1</sup>. While there, Plaintiff began knocking on the inner door of the Unit in order to gain entrance. However instead, was confronted through the door by the Unit's Secretary.

3. At that moment, Plaintiff (talking through the door) inquired whether there was any legal mail to be received; to sign for and thereby pick-up. The Secretary then looked into the Counselor's mailbox, and then looked at the sign-in mail sheet to determine whether Plaintiff had in fact received any legal mail for pick-up.

4. After that, the Secretary determined "No", that Plaintiff had not received any legal mail. At which instance, Plaintiff asserted that he was placed on the Call Out for 1:30 p.m. and wanted to know the circumstances as to why. The Secretary stated that there was no one here from my Unit Team to answer that question. At which time, Plaintiff proceeded back to Unit Ausable.

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<sup>1</sup>. Unit Team- consists of Unit Genesse B's Counselor (D. Snyder), Case Manager (Salami), and Unit Manager (Feldner).

5. While in Unit Ausable, at approximately 12:15 p.m., the Unit Officer who was working at that time, came to Plaintiff's cell to inform him that the Unit Manager for Unit Genesse B (Feldner) called and stated that Plaintiff was to come over to Genesse Unit as scheduled for 1:30 p.m.

6. Plaintiff then asked the Unit Officer whether there will be a routine census count which in this case would forbid any compound movement as well as to forbid Plaintiff to proceed to Genesse B at 1:30 p.m. The Officer replied that soon after the census count is over, Plaintiff is to report to Genesse B.

7. At approximately 2:00 p.m. the census count was cleared by Prison Officials and an announcement was then made allowing inmate movement on the compound. As such, Plaintiff immediately proceeded to Genesse B. Upon reaching Genesse B, Plaintiff knocked on the outer door to the Unit this time and was confronted by the same Secretary from earlier.

8. After opening the door, Plaintiff stated to the Secretary that he had a 1:30 p.m. Call Out. The Secretary stated that the Unit Manager (Feldner) was not here and that the conference was cancelled. The Secretary then proceeded to hand Plaintiff a Court Order opened without any envelope to attach.

9. The Secretary then stated that the Court Order was not here earlier when Plaintiff came and that it was recently received. Plaintiff then asked whether it was received by fax or e-mail because

it was unusual for any legal mail from a judge to be opened without the Plaintiff's presence and also to be given without an envelope in which it might have been mailed. Noting, that Plaintiff was never requested to sign for its receipt on 3/3/06.

10. Finally, the Secretary stated that she had no idea whether the Court Order was received by fax or what. Plaintiff, at that time, took the letter Order and proceeded back to where he was housed, that being Unit Ausable.

11. Subsequently, on 3/6/06, Plaintiff received, by "Special Mail"<sup>2</sup> procedures, legal mail from the Magistrate Judge denying Petition for Preliminary Injunction due to Plaintiff currently residing outside the Court's jurisdiction, and also, to this end, cancelling conference.

12. Here, in this instance, although there is no absolute right to a hearing on a preliminary injunction, a hearing is customarily held and is the preferred procedure. See **42 Am. Jur 2d Injunctions §259.**

13. The Magistrate Judge complying with customary procedures, ordered a conference scheduled 3/3/06 for 2:00 p.m. with parties by telephone. However, Plaintiff was not permitted to attend the scheduled conference due to Defendants' managing agents over him.

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2. Correspondence sent to and received from... U.S. Courts which are sealed or opened in the presence of the "Inmate" and logged into record. See **28 CFR §§540.18-540.19.**

14. Moreover, Plaintiff had been denied notice and presence to the conference scheduled 3/3/06 for 2:00 p.m. That, had it not been due to Defendants' managing agents failing to permit him to participate in conference, he would have been present to support his Motion for Preliminary Injunction.

WHEREFORE, Plaintiff request the Court to GRANT Order to sanction Defendants for which whose managing agents failed to permit him from participating in conference call scheduled 3/3/06, Friday at 2:00 p.m.

I, DEMETRIUS BROWN, hereby affirm and declare under penalty of perjury, 28 U.S.C. §1746, that the foregoing is true and correct.

3-28-06  
Dated

Demetrius Brown

cc:file  
db/db

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION

DEMETRIUS BROWN,	)	
Plaintiff,	)	
	)	
	)	
v.	)	Civil Action No. 04-379 Erie
	)	
U.S. JUSTICE DEPARTMENT,	)	
BUREAU OF PRISONS, FCI MCKEAN,	)	
WARDEN JOHN J. LAMANNA,	)	
REGIONAL DIRECTOR D. SCOTT	)	
DODRILL, MEDICAL DIRECTOR	)	
NEWTON E. KENDIG, DIRECTOR	)	
HARLEY G. LAPPIN,	)	
Defendants.	)	

ORDER

**AND NOW**, this \_\_\_\_ day of March, 2006;

**IT IS HEREBY ORDERED THAT**, sanction of the Defendants are (A); the matters outlined in Plaintiff's Petition for Preliminary Injunction and the facts of which **shall be taken** for establishing the purpose of the action in accordance with the claim of Plaintiff.

**IT IS FURTHER ORDERED THAT**, sanction of the Defendants are (B); the Defendants **shall not** be allowed to oppose Plaintiff's claims **nor shall** Defendants be allowed to introduce designated matters into evidence.

**IT IS FURTHER ORDERED THAT**, sanction of the Defendants are (C); a judgment rendered by default to defending against Plaintiff's Petition for Preliminary Injunction.

**IT IS FURTHER ORDERED THAT,** sanction of the Defendants are (D); the Defendants **shall pay** the Plaintiff reasonable expenses for his time researching and preparing Petition for Preliminary Injunction which the later Order cancelling conference was caused by Defendants for which whose managing agents failed to permit Plaintiff from participating in conference call scheduled 3/3/06, Friday at 2:00 p.m.

**IT IS FURTHER ORDERED THAT,** the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

\_\_\_\_\_  
/s/

cc: All parties of record

**EXHIBIT A**



RBKBI  
PAGE 001

RAY BROOK FCI

03-02-2006  
16:39:02

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REG NO	NAME	FROM	TO	TIME	CATEGORY(2)	CATEGORY(3)
CALLOUTS FOR 03-03-2006					QTR ASGN	WRK ASGN
57143-066	AARON		CHAPEL	1231	G02-118U	REC PM
			EDUC STONE	0730	G02-118U	REC PM
55329-053	ADEYI		CHAPEL	1231	D05-224U	ELEC I
12137-014	ANDERSON		CHAPEL	1231	D11-002U	REC AM
41412-180	ARAGON-RAN		EDUC STONE	0730	N09-120U	UNASSG
14063-055	BAKER		HOSP G	0700	A02-135L	CONVALESCE
			PHARMACY	0700	A02-135L	CONVALESCE
67474-053	BANKS		CHAPEL	1231	G05-209L	KITCHEN PM
69619-053	BISHOP		EDUC PAR	0930	M01-105U	CARP SHOP
03008-050	BOOKER		HOSP G	0700	S02-203L	F/S WHSE
08343-007	BREWER		CHAPEL	1231	D01-114L	ORD DEL A
			HOSP G	0700	D01-114L	ORD DEL A
40520-050	BRIGMAN		CHAPEL	1231	M11-001L	ORD MOH A
04575-070	BROWN		CHAPEL	1331	S02-212L	IND WHSE
21534-039	BROWN		CHAPEL	1331	A01-147U	DINE RM.AM
			UNIT GEN	1330	A01-147U	DINE RM.AM
24238-038	BROWN		EDUC PAR	0930	G05-226U	EDUC PM
48503-054	BROWN		X RAY	0730	Z03-226LAD	SHU UNASGN
55199-066	CAMPBELL		CHAPEL	1231	G07-230L	CUT/SEW 6
58016-066	CANN		CHAPEL	1231	N04-127U	F/S WHSE
05605-070	CANTE-FRAN		PHARMACY	0700	A03-238U	DINE RM.PM
05321-070	CAPARRELLI		EDUC PAR	0930	M01-103U	ORD MOH A
44717-004	CARLINI		CHAPEL	1231	G05-223U	CHAPEL
18238-038	CARMICHAEL		CHAPEL	1231	G01-108L	CUT/SEW 6
54030-053	CARRERA		HOSP G	0700	N03-144L	ORD NIA B
22782-018	CASAS		HOSP G	0700	G03-146U	REC PM
15142-359	CERVANTES-		EDUC TECH	0930	G08-252U	DINE RM.PM
55097-054	CHEN		PHARMACY	0700	M05-207U	REC PM
16699-016	CICERO		CHAPEL	1231	N10-127L	BAKERY PM
05226-070	COGGINS		CHAPEL	1231	S02-207L	F/S WHSE
20414-050	COLLINS		CHAPEL	1331	S02-201L	LANDS. OUT
			PHARMACY	0700	S02-201L	LANDS. OUT
55333-053	COLON		DRUG PROG	1230	G05-219L	CUT/SEW 4
08831-084	COOK		CHAPEL	1231	G03-147L	ORD GEN B
57244-066	COUSIN		CHAPEL	1231	D07-242L	ORD DEL B
11438-052	CROSBY		CHAPEL	1331	D12-001L	DINE RM.AM

G0002

MORE PAGES TO FOLLOW . . .

